93-393

Supreme Court, U.S.
FILED
SEP 8 1993
OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ALLIED PRODUCTS CORPORATION,
Petitioner,

v.

DIMITRIOS TH. VAGENAS, SPYRIDON TH. VAGENAS,
CHRYSOSTOMOS TH. VAGENAS, and CONSTANTINOS TH. VAGENAS,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

L. VASTINE STABLER, JR.*
WILLIAM H. PRYOR, JR.
WALSTON, STABLER, WELLS,
ANDERSON & BAINS
505 North 20th Street, Suite 500
Birmingham, Alabama 35203
(205) 251-9600

Attorneys for the Petitioner,
Allied Products Corporation

**Counsel of Record*

St. Louis Law Printing, Inc. 13307 Manchester Rd. St. Louis, MO 63131 314-231-4477

QUESTION PRESENTED FOR REVIEW

The Treaty of Friendship, Commerce, and Navigation Between the United States and Greece (the Greek FCN Treaty) contains an access-to-courts provision, which states "Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to access to courts of justice and to administrative tribunals and agencies within the territories of the other Party, both in pursuit and defense of their rights." In the definition of "national treatment", the Treaty states that "[t]he term does not imply immunity from the laws and regulations of a Party which apply in a non-discriminatory manner to nationals, companies, products, vessels or other objects, as the case may be, of both Parties."

The question presented is whether the access-to-courts provision of the Greek FCN Treaty requires that a federal court in a diversity action apply the same limitations period for the enforcement of a Greek judgment as is applied in the enforcement of judgments of courts from other jurisdictions in the United States.

PARTIES TO THE PROCEEDINGS

Allied Products Corporation, petitioner and defendant.

Dimitrios Th. Vagenas, Spyridon Th. Vagenas, Chrystomos Th. Vagenas, and Constantinos Th. Vagenas, respondents and plaintiffs.

TABLE OF CONTENTS

	Page
Question Presented for Review	i
Parties to the Proceedings	ii
Table of Authorities	iv
Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions	2
Statement of the Case	4
Reasons for Granting the Writ	6
I. The Eleventh Circuit Misinterpreted the Greek FCN Treaty to Deny the Power of a State to Impose a Shorter Limitations Period for Claims Filed by Nonresidents Arising Outside the State.	7
A. Alabama Law Does Not Discriminate Against Greek Citizens.	7
B. The Greek FCN Treaty Defers to Reasonable Classifications in Local Laws ..	7
II. The Eleventh Circuit Misinterpreted the Greek FCN Treaty to Deny the Power of a State to Impose a Shorter Limitations Period for a Judgment Entered Outside the State.	10
Conclusion	15
Appendix	A-1

TABLE OF AUTHORITIES

Page(s)

Cases:

Argentine Republic v. Amerada Hess Shipping Corporation, 488 U.S. 428 (1989) 9

Bank of Augusta v. Earle, 38 U.S. 519 (1839) 14

Canadian Northern Ry. Co. v. Eggen, 252 U.S. 553 (1920) 9-10

Dore v. Thornburgh, 90 Cal. 64, 27 P. 30 (1891) 13

G.D. Searle & Co. v. Cohn, 455 U.S. 404 (1982) 9

Hilton v. Guyot, 159 U.S. 113 (1895) 12-13

M'Elmoyle v. Cohen, 38 U.S. 312 (1839) 11-12

Maiorano v. Baltimore & Ohio Railroad Co., 213 U.S. 268 (1909) 8

Parsons v. Bank Leumi Le-Israel, B.M., 565 So.2d 20 (Ala. 1990) 13

Sanders v. Liberty National Life Insurance Co., 443 So. 2d 909 (Ala. 1983) 11

Sun Oil Co. v. Wortman, 486 U.S. 717 (1988) 11,12,14

The Attorney General of Canada on Behalf of the Majesty the Queen in Right of Canada v. Tysowski, 118 Idaho 737, 800 P. 2d 133 (Idaho App. 1990) 13

Wells v. Simonds Abrasive Co., 345 U.S. 514 (1953) ... 11

Wickes v. Olympic Airways, 745 F.2d 363 (9th Cir. 1984) 6

Statutes:

U. S. CONST. art. IV §1 ..... 2-3, 11-13

U.S. CONST. art. IV § 2 9

Treaty of Friendship, Commerce and Navigation Between the United States and Greece, 5 U.S.T. 1829 (1951) ..... *passim*

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1332 2,4

28 U.S.C. § 2101(c) 2

ALA. CODE § 6-2-32 (1975) 2,11

ALA. CODE § 6-2-34(9) (1975) 2,5

ALA. CODE § 6-9-230 *et seq.* (Supp. 1993) 13

ALA. CODE §6-2-30 (1975) 2

ALA. CODE §6-2-38(l) (Supp. 1992) 2,5

Other Authorities:

Commercial Treaties: Hearings on Treaties of Friendship, Commerce and Navigation with Israel, Ethiopia, Italy, Denmark, Greece, Finland, Germany and Japan Before the Subcommittee on Commercial Treaties of the Senate Foreign Relations Committee, 83d Cong. 1st Sess., at 9 (1953) 6

Uniform Enforcement of Foreign Judgments Act 13

Uniform Foreign Money-Judgments Recognition Act 13-14

Walker, *Modern Treaties of Friendship, Commerce and Navigation*, 42 Minn. L. Rev. 805 (1958) 6

Wilson, *Access-to Courts Provisions in United States Commercial Treaties*, 47 Am. J. Int'l L. 20 (1953) 6,8

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ALLIED PRODUCTS CORPORATION,

Petitioner,

v.

DIMITRIOS TH. VAGENAS, SPYRIDON TH. VAGENAS,
CHRYSOSTOMOS TH. VAGENAS, and CONSTANTINOS TH. VAGENAS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

OPINIONS BELOW

The decision of the United States Court of Appeals, Eleventh Circuit, is reported at 988 F.2d 104 (1993), a copy of which is attached as Appendix A. The judgment of the United States District Court is reported at 789 F. Supp. 1137 (M.D. Ala. 1992), a copy of which is attached as Appendix B.

JURISDICTION

The decision of the United States Court of Appeals was entered on April 9, 1993. A timely petition for rehearing was filed on April 29, 1993, and denied on June 10, 1993. A petitioner has ninety days from the date of denial of the petition

for rehearing to file a petition for writ of certiorari with the Court. 28 U.S.C. §2101(c). This petition, therefore, is timely. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). The jurisdiction of the United States District Court was invoked under 28 U.S.C. § 1332.

CONSTITUTIONAL AND STATUTORY PROVISIONS

> All civil actions must be commenced after the cause of action has accrued within the period prescribed in this article and not afterwards, unless otherwise specifically provided in the Code.

ALA. CODE §6-2-30 (1975).

> Within 20 years, actions upon a judgment of decree of any court of this state, of the United States or of any state or territory of the United States must be commenced.

ALA. CODE § 6-2-32 (1975).

> The following must be commenced within six years:
>
> * * *
>
> (9) Actions upon any simple contract or specialty not specifically enumerated in this section.

ALA. CODE § 6-2-34(9) (1975).

> (l) All actions for any injury to the person or rights of another not arising from contract and not specifically enumerated in this section must be brought within two years.

ALA. CODE §6-2-38(l) (Supp. 1992).

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws

> prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

U. S. CONST. art. IV §1.

> Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies within the territories of the other Party, in all degrees of jurisdiction, both in pursuit and in defense of their rights. It is understood that companies of either Party not engaged in activities within the territories of the other Party shall enjoy such access therein without any requirement of registration or domestication.

Treaty of Friendship, Commerce and Navigation Between the United States and Greece, art. VI, para. 1, 5 U.S.T. 1829, 1841 (1951).

> The term "national treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party. The term does not imply immunity from the laws and regulations of a Party which apply in a non-discriminatory manner to nationals, companies, products, vessels, or other objects, as the case may be, of both Parties.

Id., art. XXIV, para. 1, at 1907.

> The term "most-favored-nation treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of any third country.

Id., art. XXIV, para. 2, at 1908.

> The term "access" as used in Article VI, paragraph 1 of the present Treaty, shall comprehend, among other things, legal aid and freedom of nationals of either Party from liability to provide both security for costs and security for judgment, on the same terms and under the same conditions as are applicable in the case of nationals of the other Party and of nationals of any third country.

Id., art. XXIV, para. 5, at 1911.

STATEMENT OF THE CASE

This action was brought in the United States District Court for the Middle District of Alabama by the Vagenas brothers ("Vagenas") against Allied Products Corporation ("Allied") to enforce a judgment rendered by a Greek court against Allied.[1] Jurisdiction was invoked under 28 U.S.C. § 1332. The original judgment was entered by the Greek court on January 3, 1981. Although this 1981 judgment was final and res judicata, a supplementary proceeding under Greek law must be filed before the judgment can be executed upon in Greece. A judgment from this supplementary proceeding, called an "affirmative judgment," was entered on September 26, 1985.

The suit on the judgment was not filed in this country until July 17, 1991. Allied filed a motion for judgment on the pleadings on the ground that the applicable statute of limitations in Alabama was a two year residual statute. The district court granted the motion.

Vagenas appealed to the United States Court of Appeals for the Eleventh Circuit. Vagenas claimed that the Alabama statute

---

[1] Continental Gin Company and Continental Eagle Corporation were also named as defendants, but there is no separate entity known as "Continental Gin Company" and the claims against "Continental Eagle Corporations" were dismissed. Thus, Allied Products Corporation, operating through its former division, Continental Gin Company, is the sole defendant.

of limitations for twenty years was the appropriate statute. That statute covers "actions upon a judgment or decree of any court of this state, of the United States or of any state or territory of the United States ... ." ALA. CODE § 6-2-32 (1975). Although this statute is expressly applicable only to judgments entered by courts in the United States, Vagenas argued that the twenty year statute should be applied by analogy and, in support of the argument, cited the Treaty on Friendship, Commerce and Navigation Between the United States and Greece, 5 U.S.T. 1829 (1951). That Treaty provides in pertinent part that "nationals and companies of either Party shall be accorded national treatment and most favored nation treatment with respect to access to the courts of justice ... ." *Id.*, art. VI, para. 1, 5 U.S.T. at 1841.

The Eleventh Circuit reversed the trial court and held that "the treaty between the United States and Greece elevates the foreign judgment to the status of sister state judgment," which requires application of the twenty year statute. The court of appeals then rejected the two year residual provision, and stated that the two year statute was limited to tort actions. ALA. CODE § 6-2-38(l) (Supp. 1992). The Eleventh Circuit characterized the case as a contract action, but ignored the six year limitation period for contract actions. ALA. CODE § 6-2-34(9) (1975). Instead, the Eleventh Circuit held that to impose a different limitation for recognizing and enforcing a Greek judgment than for a judgment of a sister state would be in direct conflict with the access-to-courts provision in the Greek FCN Treaty. Therefore, the Eleventh Circuit ruled that the Greek FCN Treaty compelled a finding that the twenty year statute for domestic judgments was applicable to judgments from foreign countries.

Allied filed a petition for rehearing and the petition was denied.

REASONS FOR GRANTING THE WRIT

The Eleventh Circuit erroneously interpreted the Treaty of Friendship, Commerce and Navigation Between the United States and Greece, 5 U.S.T. 1829 (1951) (the Greek FCN Treaty), to require that, in applying local statutes of limitation, "foreign country judgments be treated the same as domestic judgments." This interpretation misunderstands the purpose of access-to-courts provisions in commercial treaties.[2] Under the Eleventh Circuit ruling, a state is denied the power to impose a shorter limitations period for suits filed by aliens for claims arising under foreign law, even though a state has power to impose a shorter limitations period for suits filed by citizens of sister states for claims arising outside the forum state. In addition, a state is denied the power to impose a shorter limitations period for suits to enforce foreign country judgments even though the state has the power to impose a shorter limitations period for suits to enforce sister state judgments. This radical expansion of the concept of access to courts deserves the attention of this Court.

---

[2] "The Greek Treaty is one of an extensive series of similar treaties of Friendship, Commerce and Navigation entered into by the United States and its trading partners following World War II." *Wickes v. Olympic Airways*, 745 F.2d 363, 366 (9th Cir. 1984); *see also* Walker, *Modern Treaties of Friendship, Commerce and Navigation*, 42 Minn. L. Rev. 805 (1958). "All of the new treaties contain general access clauses" like the access-to-courts provision in the Greek FCN Treaty. Wilson, *Access-to Courts provisions in United States Commercial Treaties*, 47 Am. J. Int'l L. 20, 45 (1953). Indeed, of the "more than 130 commercial treaties" entered by the United States "[i]n about half ... there have been broadly stated rights and privileges as to free access to the courts of justice." *Id.* at 21; *see also Commercial Treaties: Hearings on Treaties of Friendship, Commerce and Navigation with Israel, Ethiopia, Italy, Denmark, Greece, Finland, Germany and Japan Before the Subcommittee on Commercial Treaties of the Senate Foreign Relations Committee*, 83d Cong. 1st Sess., at 9 (1953) (comparing access clauses in six FCN treaties).

I. The Eleventh Circuit Misinterpreted the Greek FCN Treaty to Deny the Power of a State to Impose a Shorter Limitations Period for Claims Filed by Nonresidents Arising Outside the State.

The Eleventh Circuit confused equal treatment of persons, regardless of nationality, with equal treatment of transactions. The access-to-courts provision in the Greek FCN Treaty states, "Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies within the territories of the other Party, both in pursuit and in defense of their rights." Treaty art. VI, para. 1, 5 U.S.T. at 1841. Thus, the Treaty focuses on a Greek citizen's access to courts and does not address the treatment of judgments or other transactions under the substantive law of the forum.

A. Alabama Law Does Not Discriminate Against Greek Citizens.

The Alabama statutes of limitation operate without regard to the nationality of the litigant. If a United States citizen obtained a Greek judgment and attempted to enforce the judgment in Alabama, the applicable statute of limitation would be the same as in this case. Under Alabama law, the limitations statute is applied to each type of judgment (two years for a foreign country judgment and twenty years for a United States judgment) regardless of the citizenship of the plaintiff. The Eleventh Circuit did not explain, for example, what result should occur when the plaintiff seeking to enforce a Greek judgment is not from Greece.

B. The Greek FCN Treaty Defers to Reasonable Classifications in Local Laws.

The Greek FCN Treaty does not require equal treatment in all aspects of the law. The access-to-courts provision guarantees only the privilege of using the courts of each country. This provision does not prohibit the State of Alabama from making

reasonable classifications between the rights and duties of a nonresident alien and a resident national.

In *Maiorano v. Baltimore & Ohio Railroad Co.*, 213 U.S. 268 (1909), this Court affirmed a decision of the Supreme Court of Pennsylvania that a nonresident alien could not maintain a wrongful death action under the Pennsylvania statute. The plaintiff, an Italian citizen, argued that the access-to-courts clause in a commercial treaty with Italy[3] required equal treatment of nonresident aliens and resident citizens. This Court reasoned, however, that the access-to-courts clause was limited to bestowing the privilege of access to courts. "This article does not define substantive rights, but leaves them to be ascertained by the law governing the courts and administered and enforced in them." 213 U.S. at 274.

The access-to-courts provision of the Greek FCN Treaty expressly defers to local laws. Greek citizens are accorded "national treatment" in their access-to-courts. The definition of "national treatment" states that "[t]he term does not imply immunity from the laws and regulations of a party which apply in a nondiscriminatory manner to nationals, companies, products, vessels, or other objects, as the case may be, of both Parties." Treaty art. XXIV, para. 1, 5 U.S.T. at 1907.[4] National

---

[3] That provision stated "The citizens of either party shall have free access to the courts of justice, in order to maintain and defend their own rights, without any other conditions, restrictions, or taxes than such as are imposed upon the natives." *Maiorano*, 213 U.S. at 273-74.

[4] This deference to local laws has always been stipulated in the commercial treaties between the United States and Greece. As one commentator has explained, before the FCN Treaty was entered, the United States and Greece had an agreement in a protocol of 1890 and treaty of 1837 that nationals of the other party would have "'the right of appearing before tribunals for the purpose of bringing an action or of defending themselves with the sole condition that in exercising these rights they always conform to the laws and customs' of the country." Wilson, *Access-to-Courts Provisions in United States Commercial Treaties*, 47 Am. J. Int'l L. 20, 41-42 (1953)

treatment, therefore, does not mean absolute equality. Laws and regulations must be applied only in a "nondiscriminatory manner," which permits rational classifications. *See also G.D. Searle & Co. v. Cohn*, 455 U.S. 404, 408 (1982) (upholding, against an equal protection challenge, a statute tolling the limitations period for claims against foreign corporations, because it was "rationally related to the achievement of legitimate governmental ends").

In *Argentine Republic v. Amerada Hess Shipping Corporation*, 488 U.S. 428 (1989), two Liberian corporations sued the Argentine Republic for destroying an oil tanker and its contents during the Falklands War. This Court concluded that the Argentine Republic was not subject to the jurisdiction of the United States courts under the Foreign Services Immunities Act of 1976. The plaintiffs argued that the Liberian FCN Treaty granted freedom of access to the courts, but this Court, in an opinion by Mr. Chief Justice Rehnquist, held that the access to courts provision was subject to local laws and the Foreign Services Immunities Act was one of those "local laws." 488 U.S. at 443.

By overriding Alabama law, the Eleventh Circuit granted to aliens a right to generous statutes of limitation that has been denied to citizens of the United States. In *Canadian Northern Ry. Co. v. Eggen*, 252 U.S. 553 (1920), this Court permitted the State of Minnesota to impose a longer limitations period for citizens of Minnesota than for citizens of another state. The plaintiff, a citizen of Washington, argued that the privileges and immunities clause of section 2 of article IV of the Constitution required that nonresidents be given "precisely the same rights in the courts of a state as resident citizens have." *Id.*, at 561. This Court, however, held that this "literal interpretation of the clause cannot be accepted." *Id.*

This Court explained in *Eggen* that the access-to-courts accorded nonresidents does not require the application of generous statutes of limitation reserved for residents of the forum state:

> The principle on which this holding rests is that the constitutional requirement is satisfied if the nonresident is given access to the courts of the state upon terms which in themselves are reasonable and adequate for the enforcing of any rights he may have, even though they may not be technically and precisely the same in extent as those accorded to resident citizens. The power is in the courts, ultimately in this court, to determine the adequacy and reasonableness of such terms. A man cannot be said to be denied, in a constitutional or in any rational sense, the privilege of resorting to courts to enforce his rights when he is given free access to them for a length of time reasonably sufficient to enable an ordinarily diligent man to institute proceedings for their protection.

Id. at 562. The Eleventh Circuit misunderstood this concept.

The expansion of the concept of access-to-courts by the Eleventh Circuit sows confusion in both international and American law. The misinterpretation of the Greek FCN Treaty grants aliens a greater right of access to courts than enjoyed by citizens of the United States and overrides the reasonable classifications in local laws between the rights of aliens and citizens. The Eleventh Circuit ruling, therefore, requires review by this Court.

II. The Eleventh Circuit Misinterpreted the Greek FCN Treaty to Deny the Power of a State to Impose a Shorter Limitations Period for a Judgment Entered Outside the State.

As explained in section I, the Greek FCN Treaty is concerned with citizens, not judgments. The Eleventh Circuit ruled that Greek judgments must be given the same limitations period as

United States judgments, regardless of the citizenship of the plaintiff. This misinterpretation of the Treaty has produced the unintended effect of giving foreign country judgments a greater right to enforcement than judgments entitled to full faith and credit under the Constitution. This exalted status of Greek judgments is contrary to the intent of the Greek FCN Treaty.

This Court has upheld repeatedly the right of a state to impose a different limitation period for judgments entered and other claims arising outside the state. *See Sun Oil Co. v. Wortman*, 486 U.S. 717 (1988); *Wells v. Simonds Abrasive Co.*, 345 U.S. 514 (1953); *M'Elmoyle v. Cohen*, 38 U.S. 312 (1839). The Eleventh Circuit denied that right to the State of Alabama. Under Alabama law, the law of the forum provides the statute of limitation. *Sanders v. Liberty National Life Insurance Co.*, 443 So. 2d 909 (Ala. 1983). The Eleventh Circuit held, however, that the Greek FCN Treaty required the application of the twenty year limitations period that, under Alabama law, is expressly reserved for United States judgments. ALA. CODE § 6-2-32 (1975). The Eleventh Circuit transformed the principle of access-to-courts for foreign citizens into a super guarantee of faith and credit for foreign country judgments.

Incredibly, this super guarantee created by the Eleventh Circuit is more powerful than full faith and credit under the Constitution. In *M'Elmoyle v. Cohen*, 38 U.S. 312 (1839), this Court held that the State of Georgia could impose a five year statute of limitation for an action to enforce a judgment entered in South Carolina, even though a judgment entered by a court in Georgia could be enforced for twenty years.[5] This Court rejected the plaintiffs' argument that the shorter limitations period for sister state judgments violated the full faith and credit clause of article IV, section 1, of the Constitution:

---

[5] This Court reaffirmed the holding of *M'Elmoyle* in *Sun Oil Co. v. Wortman*, 486 U.S. 717, 722 (1988).

> ... There is no direct constitutional inhibition upon the states, nor any clause in the Constitution from which it can be even plausibly inferred, that the states may not legislate upon the remedy in suits upon the judgments of other states, exclusive of all interference with their merits. It being settled that the statute of limitations may bar recoveries upon foreign judgments; that the effect intended to be given under our Constitution to judgments, is, that they are conclusive only as regards the merits; the common law principle then applies to suits upon them, that they must be brought within the period prescribed by the local law, the *lex fori*, or the suit will be barred.

Id., 38 U.S. at 328.[6]

The guarantee of full faith and credit for domestic judgments lies at the heart of why the State of Alabama can reasonably impose a shorter limitations period for foreign country judgments. Foreign country judgments are subject to principles of comity. *See Hilton v. Guyot*, 159 U.S. 113 (1895). Foreign country judgments "are not entitled to full credit and conclusive

---

[6] Ironically, this Court explained in *Wortman* that "immediately following ratification of the Constitution" the choice of law rule of applying the limitations period of the forum was drawn from "international law on that subject." 486 U.S. at 724. In *M'Elmoyle*, this Court explained that the choice of an appropriate limitations period was the sovereign right of each state under the law of nations:

> ... It would be strange, if in the now well understood rights of nations to organize their judicial tribunals according to their notions of policy, it should be conceded to them in every other respect than that of prescribing the time within which suits shall be litigated in their courts. Prescription is a thing of policy, growing out of the experience of its necessity and the time after which suits or actions shall be barred, has been, from a remote antiquity, fixed by every nation, in virtue of that sovereignty by which it exercises its legislation for all persons and property within its jurisdiction. ...

38 U.S. at 327.

effect when sued upon in this country, but are prima facie evidence only of the justice of the plaintiffs' claim." *Id.*, 159 U.S. at 227. In a suit to enforce a foreign country judgment, the defendant may contest whether the procedures of the foreign court were fair and whether the defendant had an opportunity to be heard. *Parsons v. Bank Leumi Le-Israel, B.M.*, 565 So.2d 20 (Ala. 1990).

This case is a good example of the difference between full faith and credit and comity. The Greek judgment sought to be enforced was entered in 1981. The defendant contends that it did not have a fair opportunity to be heard. The problems of proof caused by the passage of time are considerable. If the judgment had been entered in another state, the fairness of the procedure could not be contested. The State of Alabama should have the right to consider the difference in the enforcement of a foreign county judgment and prescribe a different limitations period, as other states long have done. *See, e.g., Dore v. Thornburgh*, 90 Cal. 64, 27 P. 30 (1891) (where a residual statute of limitation was applied in a suit to enforce an English judgment); *The Attorney General of Canada on Behalf of the Majesty the Queen in Right of Canada v. Tysowski*, 118 Idaho 737, 800 P. 2d 133 (Idaho App. 1990) (residual statute of limitation, not United States judgment statute, applies to suit to enforce Canadian judgment). Should the Uniform Enforcement of Foreign Judgments Act, which is expressly limited to judgments entered in the United States, be extended by judicial fiat to include Greek judgments?[7]

---

[7] This Uniform Act, which has been adopted in 41 states and the Virgin Islands, was originally approved in 1948 and revised in 1964. Alabama adopted this Act in 1986. ALA. CODE § 6-9-230 *et seq.* (Supp. 1993). The Act provides a speedy and economical method for enforcing sister state judgments. A substantially different act addresses the recognition and enforcement of foreign country judgments. *See* Uniform Foreign Money-Judgments Recognition Act. That Act was approved in 1962 and has been adopted by 22

(Footnote 7 continued on next page)

By elevating foreign country judgments to a super guarantee of faith and credit, the Eleventh Circuit turned the American framework of comity on its head. Long ago, Chief Justice Taney explained for this Court that, under the Constitution and principles of comity, more deference and respect should be given to the states of the Union than to foreign countries:

> ... The intimate union of these states, as members of the same great political family; the deep and vital interests which bind them so closely together; should lead us, in the absence of proof to the contrary, to presume a greater degree of comity, and friendship, and kindness towards one another, than we should be authorized to presume between foreign nations. ...

Bank of Augusta v. Earle, 38 U.S. 519, 590 (1839). The misinterpretation of the Greek FCN Treaty by the Eleventh Circuit is based on the opposite presumption of comity.

In affirming the constitutional authority of states to determine appropriate limitations periods in the interstate context, Mr. Justice Scalia, writing for the Court, stated "A state's interest in regulating the work load of its courts and determining when a claim is too stale to be adjudicated certainly suffices to give its legislative jurisdiction to control the remedies available in its courts by imposing statutes of limitation." *Sun Oil Co. v. Wortman*, 486 U.S. at 730. The petitioner submits that the Greek FCN Treaty, which does not mention judgments and acknowledges the province of local laws, was not intended to override the constitutional authority of the State of Alabama to impose a different limitations period for foreign country judgments.

(Footnote 7 continued)

states and the Virgin Islands. As the district court recognized, Alabama has not adopted that Uniform Act, 789 F. Supp. at 1140, which states when a foreign country judgment should be recognized and, if recognized, how it shall be enforceable. That Act, however, does not address enforcement procedures.

CONCLUSION

For the foregoing reasons, this petition for certiorari should be granted. This case should be remanded to the court of appeals to determine whether the district court applied the correct limitations period under Alabama law.

Respectfully submitted,

L. Vastine Stabler Jr.*
William H. Pryor Jr.
Walston, Stabler, Wells,
Anderson & Bains
505 North 20th Street, Suite 500
Birmingham, Alabama 35203
(205)251-9600

Attorneys for the Petitioner,
Allied Products Corporation

**Counsel of Record*

APPENDIX

APPENDIX A

Dimitrios Th. VAGENAS, Spyridon Th. Vagenas, Chrysostomos Th. Vagenas, and Constantinos Th. Vagenas, Plaintiffs-Appellants,

v.

CONTINENTAL GIN COMPANY; Continental Eagle Corporation, and Allied Products Corporation, Defendants-Appellees.

No. 92-6387.

United States Court of Appeals, Eleventh Circuit.

April 9, 1993.

Greek judgment creditors brought suit to enforce Greek judgment against American judgment debtor. The United States District Court for the Middle District of Alabama, No. 91-A-810-N, W. Harold Albritton, III, J., 789 F.Supp. 1137, determined that suit was barred by two-year residual limitation statute. Creditors appealed. The Court of Appeals, Fay, Circuit Judge, held that suit was governed by 20-year statute relating to domestic judgments.

Vacated and remanded.

Limitation of Actions key 39(6)

Treaties key 8

Twenty-year statute relating to domestic judgments, rather than two-year residual limitation statute, governed action to enforce Greek judgment in Alabama court; treaty between United States and Greece elevated foreign judgment to status of sister state judgment. Ala.Code 1975, §§ 6-2-32, 6-2-38(*l*).

Appeal from the United States District Court for the Middle District of Alabama.

Before FAY and BIRCH, Circuit Judges and KAUFMAN*, Senior District Judge.

FAY, Circuit Judge:

This is an action by four Greek brothers to enforce a judgment entered by a Greek court against a contractor. The district court, upon a motion for judgment on the pleadings, held the action barred by a two year statute of limitations under the Alabama Code, and from this order the Greek brothers appeal. For the reasons that follow, we VACATE and REMAND for further proceedings because the district court should have applied a twenty year limitations period.

FACTUAL AND PROCEDURAL BACKGROUND

The appellants, four brothers who founded and operated the Theodoros Vagenas Brothers Cotton Gin Company (hereinafter "Vagenas"), seek to enforce a judgment rendered by a Greek court against Continental Gin Company of Prattville, Alabama, and its parent, Allied Products Corporation (hereinafter referred to together as "Continental"). In 1977, Vagenas contracted with Continental to deliver and erect a cotton ginning factory in Trikala, Greece. The parties subsequently modified the contract to provide for the delivery and installation of the factory no later than November 28, 1978. Continental agreed to compensate Vagenas for every day of delay beyond that date.

The factory did not become operational until October 10, 1979. In 1980 Vagenas filed suit in the Multimember First Instance Court of Justice of Trikala, Greece, against Continental to recover the compensation provided for by the contract and the

---

* Honorable Frank A. Kaufman, Senior U.S. District Judge for the District of Maryland, sitting by designation.

loss of profits suffered due to the delayed installation of the factory. On January 3, 1981, the Greek court entered a declaratory judgment in favor of Vagenas. Under Greek law and procedure, however, this declaratory judgment is not enforceable, but is intended as a means to induce settlement negotiations. Following a period of unsuccessful negotiations between the parties to settle the matter, and in accord with Greek procedure, Vagenas pursued the claim against Continental seeking an enforceable "affirmative judgment." In September, 1985, the Greek court found Continental in default of its contract with Vagenas and awarded the appellants damages for lost profits, contract damages and court costs, all with interest at the lawful rate until the judgment is satisfied.

Vagenas filed an action to enforce the foreign judgment in the Middle District of Alabama and moved for summary judgment. Continental responded with a motion for judgment on the pleadings, arguing that the Greek judgment was unenforceable because the court lacked in personam jurisdiction, and because the statute of limitations for enforcing the judgment had run. The district court found the latter defense dispositive. Because Alabama law does not provide a specific limitations period for actions to enforce foreign judgments, the court held a two year "residual" limitation statute barred the suit, 789 F.Supp. 1137. The district court rejected appellants' arguments that it should recognize the principles of international comity as emphasized in a treaty between the United States and Greece. Alternatively, they argued that the code section setting a twenty year time limit for enforcement of sister state judgments should govern the action because enforcement actions regarding sister state and foreign country judgments are of the same essential nature and bear a close substantive relationship with each other.

DISCUSSION

Vagenas contends the district court erred in applying the two year statute of limitations to the Greek judgment, instead of a

twenty year statute relating to domestic judgments. Our review is plenary as the question on appeal is purely one of law. *See Pullman-Standard v. Swint*, 456 U.S. 273, 287, 102 S.Ct. 1781, 1789, 72 L.Ed.2d 66 (1982). This cause is before the court by virtue of diversity jurisdiction pursuant to 28 U.S.C. § 1332, therefore, we must apply the limitations period of the forum state. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817, 822, 82 L.Ed. 1188 (1938). Because the treaty between the United States and Greece elevates the foreign judgment to the status of a sister state judgment, we hold that twenty years is the proper limitation period for this action under Alabama law.

In 1951 the United States and Greece signed the Friendship, Commerce and Navigation Treaty, 5 U.S.T. 1829 [hereinafter Friendship Treaty], in which the United States agreed to treat Greek nationals pursuing their rights in our courts in a nondiscriminatory manner. Article VI, section 1, in pertinent part provides: "Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to access to the courts of justice . . . in all degrees of jurisdiction, both in pursuit and in defense of their rights." Friendship Treaty, art. VI, 5 U.S.T. at 1851. Article XXIV, section 1, defines national treatment as that treatment which is "accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party." *Id.*, art. XXIV, 5 U.S.T. at 1907. A foreign national is not exempt from state regulation if the law is applied equally to nationals, companies, products, etc., of both the United States and Greece. *See id.* Because the Friendship Treaty is the supreme law of the land, U.S. CONST. art. VI, it effectively obligated the states to afford a Greek national the same treatment that any United States citizen would receive in an action to enforce a judgment. The treaty would preempt Alabama law if there were a conflict, but none exists. *See*

Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 699, 108 S.Ct. 2104, 2107, 100 L.Ed.2d 722 (1988).

The parties concede, and we agree, that Alabama does not provide a specific limitations period for actions seeking enforcement of foreign country judgments. There is only one section in chapter six of the code which even references the enforcement of judgments. "Within 20 years, actions upon a judgment or decree of any court of this state, of the United States or of any state or territory of the United States must be commenced." ALA.CODE § 6-2-32 (1975). Reading § 6-2-32 in light of the treaty, a Greek national with a foreign judgment must be given the same twenty year time frame to enforce the judgment as is available to the United States citizen seeking to enforce a sister state judgment in Alabama.

Continental argues the judgment must be governed by the residual provision found in subsection (*l*) of § 6-2-38 of the Alabama Code because, in creating a comprehensive statute of limitations scheme, the legislature provided a limitations period for every civil action not expressly excepted by the code. The statute provides that "[a]ll actions for any injury to the person or rights of another not arising from contract and not specifically enumerated in this section must be brought within two years." ALA.CODE § 6-2-38(*l*) (Supp. 1992). Since no other limitations provision provides for or excepts foreign country judgments, the appellees read "actions for any injury to the person or rights of another not arising from contract" broadly to include actions to enforce judgments. They reason this action does not arise from contract, but rather is an alleged "failure to satisfy an obligation" and, therefore, is an unenumerated action "for injury to the . . . rights of another." In short, they characterize this action as arising from a tort. We do not think such an interpretation would

be sound. To suggest that this action is something other than a claim for damages "arising from contract" is frivolous.[1]

Even if we thought this to be a correct interpretation of § 6-2-38(*l*), in the final analysis our decision would be no different. Application of this statute would result in imposing a two year limitations period to the Greek judgment, while applying a twenty year limit to domestic judgments. Such discriminatory treatment would directly conflict with the treaty provision which mandates foreign country judgments be treated the same as sister state judgments, thus leaving § 6-2-32 as the only relevant provision to apply in Alabama.

CONCLUSION

For the foregoing reasons, we VACATE the judgment of the district court and REMAND for proceedings consistent with this opinion.

---

[1] For centuries courts have recognized that civil actions either arise from contracts or torts. "A 'tort' has been defined broadly as a 'civil wrong, other than breach of contract, for which the court will provide a remedy in the form of an action for damages.' " *United States v. Burke*, __ U.S. __, __ _ __, 112 S.Ct. 1867, 1870-71, 119 L.Ed.2d 34 (1992) (quoting W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 1, at 2 (5th ed. 1984)).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CASE NO. CV-91-A-810-N

DIMITRIOS TH. VAGENAS, etc., et al.,
Plaintiffs,

vs.

CONTINENTAL GIN COMPANY, etc., et al.,
Defendants.

ORDER

[Filed: April 9, 1992]

This cause is before the court for consideration of plaintiffs' motion for summary judgment filed on January 26, 1992, and defendant Allied Products Corporation's motion for judgment on the pleadings filed on January 27, 1992. Based on the court's review of the parties' submissions on the pending motions, the court finds that the motion for judgment on the pleadings filed by defendant Allied Products Corporation is due to be granted and that plaintiffs' motion for summary judgment is due to be denied as moot.

I. FACTUAL BACKGROUND

Plaintiffs, four brothers who founded and operated the Theodoros Vagenas Brothers Cotton Gin Co. (hereinafter "Vagenas"), filed this action against Continental Gin Company (hereinafter "Continental") and Allied Products Corporation (hereinafter "Allied") seeking enforcement of a foreign judg-

ment.[1] Plaintiffs seek the amount awarded in the foreign judgment, plus interest at the rate provided for in the judgment.

At the time of the events giving rise to this complaint, Continental was an unincorporated division of Allied Products Corporation. Therefore, Allied is the proper defendant.

In 1977, Continental entered into an agreement with Vagenas to deliver and erect a cotton ginning factory in Trikala, Greece. By subsequent negotiations, the agreement was modified to provide for the delivery and installation of the factory no later than November 28, 1978. If the factory was not operational by that date, Vagenas would be entitled to compensation from Continental for each day of delay.

The factory did not become operational until October 10, 1979. In 1980, Vagenas commenced litigation against Continental to recover the compensation provided for in its agreement with Continental and the loss of profits it suffered due to the delay in the completion of the installation of the factory. Initially, Vagenas pursued its action against Continental in the Multimember First Instance Court of Justice of Trikala, Greece. On January 3, 1981, the Multimember First Instance Court entered a declaratory judgment in favor of Vagenas and against Continental (hereinafter referred to as "1981 declaratory judgment"). Following this judgment, the parties attempted to negotiate a settlement. When this proved unsuccessful, Vagenas pursued the matter in the Tricalla Court of First Instance, Trikala, Greece. Finding that there is "precedent (res judicata) accruing from the decree absolute 5/1981 of this court", Vagenas' factual allegations were deemed admitted, and Continental was held in

---

[1] Continental Eagle Corporation was also named as a defendant in this action because it had recently acquired the assets of Continental. By agreement of the parties and pursuant to an order of the court, Continental Eagle Corporation was dismissed from this action. *See* Order dated March 17, 1992.

default of its contract with Vagenas. On September 26, 1985, the Tricalla Court awarded Vagenas loss of profits, contract damages and court costs with interest at the lawful rate (hereinafter referred to as "1985 affirmative judgment"). According to Vagenas, the award totals $1,139,697 U.S. at the appropriate exchange rate, plus the "lawful rate of interest" of 23% per annum from May 24, 1980 to June 6, 1985, 25% per annum from June 7, 1985 to October 29, 1990 and 34% per annum from October 30, 1990 until the judgment is satisfied. It is this judgment that Vagenas now seeks to enforce.

Allied argues that the Greek judgments are unenforceable because the courts did not have in personam jurisdiction, and because the statute of limitations period for enforcing the judgment has expired. For the reasons discussed below, the court finds that Allied's statute of limitations defense is dispositive.

II. STANDARD OF REVIEW

A motion for judgment on the pleadings pursuant to Rule 12(c), *Fed. R. Civ. P.*, is appropriate when the movant clearly establishes that there are no material issues of fact which cannot be resolved on the pleadings and that he is entitled to judgment as a matter of law. *See generally* 5A C. Wright and A. Miller, *Federal Practice and Procedure: Civil 2d* §§ 1367, 1368. A Rule 12(c) judgment operates as a summary disposition of the substantive merits of the claims and defenses in the underlying pleadings. *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 883 F.2d 1429, 1436 (9th Cir. 1989). Thus, the court should grant a motion for judgment on the pleadings only when it is clear that the merits of the controversy can be fairly and fully decided on the face of the pleadings. *Audreu v. Sapp*, 919 F.2d 637, 639 (11th Cir. 1990). *See, e.g., Jablonski v. Pan American World Airways, Inc.*, 863 F.2d 289, 290 (3d Cir. 1988) (judgment on pleadings based on statute of limitations defense is appropriate).

The court finds that this cause is appropriate for summary disposition because the statute of limitations defense can be decided from the face of the complaint.

III. DISCUSSION

Allied argues that this action is governed by Alabama's residual statute of limitations which provides that "all actions for any injury to the person or rights of another not arising from contract and not specifically enumerated in this section must be brought within two years." § 6-2-38(1), *Code of Alabama*. Allied further argues that the pending cause of action accrued January 3, 1981, when Vagenas obtained a declaratory judgment from the Multimember First Instance Court of Justice.

Vagenas argues that the 1981 declaratory judgment was not an enforceable final judgment. Vagenas contends that such judgment was not obtained until September 26, 1985, when the Tricalla Court of First Instance entered an affirmative judgment for the remuneration that Vagenas is pursuing in the pending action.

Vagenas further argues that the applicable limitations period is 20 years as provided in § 6-2-32, *Code of Alabama*. Section 6-2-32 states that "within 20 years, actions upon a judgment or decree of any court of this state, of the United States or of any state or territory of the United States must be commenced."

Whether the running of the statute of limitations began with the entry of the 1981 declaratory judgment or the 1985 affirmative judgment is an issue that does not need to be decided. If the two year statute applies, both judgments are out of time; if the 20 year statute applies, both are timely. Thus, the court directs its attention to identifying the applicable limitations period.

The parties concede that Alabama law does not provide a specific limitations period for actions seeking enforcement of

money judgments of a court of a foreign country.[2] The court must either apply one of the statutory provisions to such an action or hold that there is no limitations period and that such an action may be brought at any time. Application of one of the limitations periods is preferable to the latter result.

Vagenas argues that the 20 years limitations period for enforcement of judgments from sister states should apply to this action because it is the only limitations provision that relates to enforcement of judgments. Vagenas further argues that the 20 years limitations period is appropriate because the pending action is analogous to actions to enforce judgments of sister states. The court does not agree.

Each state is required to give full faith and credit "to public acts, records, and judicial proceedings of every other state." U.S. Const. Art. IV, § 1. The constitutional and congressional intent of recognizing full faith and credit is to ensure that judgments rendered by any state of the Union are afforded the same recognition and enforcement throughout the nation. *See generally*, 47 Am. Jur. 2d §§ 1216-1222. Overall, the principles of full faith and credit do not permit a state flexibility in determining whether to recognize a judgment of its sister state.

By contrast, the effect to be given to judgments from courts of foreign nations has been governed by principles of comity. In *Hilton v. Guyot*, 159 U.S. 113 (1895), comity is defined as "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the

---

[2] Because this cause is before the court by virtue of original diversity of citizenship jurisdiction pursuant to 28 U.S.C. § 1332, the court must apply the limitations period of the forum state. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938). *See also Guaranty Trust Co. v. York*, 326 U.S. 99 (1945); *Dade County v. Rohr Industries, Inc.*, 826 F.2d 983, 987 (11th Cir. 1987).

protections of its laws." *Id.* at 164. The basic requirements for the recognition of a foreign country judgment are that the judgment must appear to be rendered by a competent court having jurisdiction of the cause and of the parties, and upon due allegations and proofs, that the defendant had an opportunity to defend against the claim, and that the court's proceedings are according to the course of a civilized jurisprudence and are stated in a clear and formal record. *Hilton*, 159 U.S. at 205-06. Comity, however, is not a rule of law, but one of practice, convenience and expediency. *See generally Somportex Ltd v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440 (2d Cir. 1971). There is no congressional, executive, or constitutional directive that mandates enforcement of judgments of foreign nations. *See Aetna Life Ins. Co. v. Tremblay*, 223 U.S. 185, 190 (1912). Under the flexible principles that underlie the practice of comity, each state is permitted to establish its own set of rules for the recognition and enforcement of foreign judgments. *See* Ronald A. Brand, *Enforcement of Foreign Money Judgments in the United States: In Search of Uniformity and International Acceptance*, 67 Notre Dame L. Rev. 253 (1991).

It is apparent to the court that the laws of Alabama are not intended to give foreign country judgments the same deference that it affords sister state judgments. The statute providing a 20 years limitations period for enforcement of sister state judgments very specifically states that it is limited to judgments of courts of the United States or of states or territories within the United States. Furthermore, in Alabama, enforcement of a judgment of a sister state merely requires the judgment creditor to file the judgment with an affidavit which includes the name and last known address of the judgment debtor and judgment creditor, and a statement that the sister state judgment is valid, enforceable and unsatisfied. § 6-9-230, *et seq., Code of Alabama*, commonly known as the Uniform Enforcement of For-

eign Judgments Act.[3] These requirements are minimal compared to the due process and fairness considerations and jurisdictional issues that underlie enforcement of a judgment from a foreign country. *See Parsons v. Bank Leumi Le-Israel, B.M.*, 565 So.2d 20, 25 (Ala. 1990).

As further evidence that the laws of Alabama do not consider actions to enforce judgments of sister states and those of foreign nations as analogous, the court finds it relevant that the Alabama legislature has not adopted the Uniform Foreign Country Money Judgment Recognition Act. *See, e.g.*, Tex. Civ. Prac. & Rem Code §§ 36.001 *et seq.*; Ga. Code § 9-12-110 *et seq.* The Recognition Act provides that a judgment from a governmental unit other than a state or territory of the United States is enforceable in the same manner as a judgment of a sister state which is entitled to full faith and credit. Alabama has not adopted the Recognition Act, and, therefore, has not accepted the notion that a judgment of a foreign nation is enforceable the same as a judgment of a sister state. Thus, the court finds that the statute of limitations period applicable to actions to enforce judgments of sister states does not govern actions to enforce judgments of foreign nations.

Because there is not another statute of limitations provision that specifically addresses actions to enforce judgments of foreign nations, the court finds that the applicable limitations period is the two years residual limitations period. § 6-2-38(1), *Code of Alabama*. The pending action relates to an injury to rights that does not arise from contract. This is an action by a judgment creditor against a judgment debtor. The injury that Vagenas seeks to redress does not arise from a contract, mortgage or specialty that might otherwise warrant application of the

---

[3] Under the Act, foreign judgment means "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." § 6-9-231, *Code of Alabama*.

six years limitations statute. Ala. Code § 6-2-34(9). *Cf. Weaver v. American National Bank*, 452 So.2d 469, 473 (Ala. 1984) (cause of action to recover collateral from secured party is *ex contractu* and is therefore, governed by the six statute of limitations).

The court does not find it persuasive that there are no cases where the two year residual statute has been applied to actions to enforce foreign country judgments. Neither are there any cases declining to apply the two year residual statute. The court presumes that the legislature did not intend to allow certain claims to be brought at any time without limitation. Section 6-2-38(1) is the only residual type statute to be found. Nor does the court find it prejudicial or burdensome to require a judgment creditor seeking to enforce a judgment from a foreign nation to pursue such action within two years of obtaining the judgment. Enforcement of a foreign nation judgment requires resolution of substantive issues, specifically regarding the sufficiency of service and the opportunity to defend in the foreign proceedings. The evidentiary matters related to these issues reasonably rely on memories and information that may become stale, or eventually unavailable. Thus, prompt enforcement of a foreign judgment, which may in fact serve as the judgment debtor's only notice of the judgment debt, is warranted.

Accordingly, the court finds that the two years limitations period provided in § 6-2-38(1), *Code of Alabama*, governs the pending action to enforce a judgment of a foreign nation, and that this cause was not timely filed.

IV. CONCLUSION

For the foregoing reasons, it is the ORDER of the court that Allied Products Corporation's motion for judgment on the pleadings filed January 27, 1992, is due to be and it is hereby GRANTED and judgment is due to be and it is hereby entered in favor of defendants Allied Products Corporation and Continental Gin Company. It is further ORDERED that Vagenas' motion for summary judgment is DENIED as moot.

DONE this 9th day of April, 1992.

/s/ W. Harold Albritton
United States District Judge

EOD 4-9-92